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ATTORNEYS FOR PLAINTIFF
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN RUSSELL HOWALD,

Defendant.

CR 21-04-H-BMM

TRIAL STIPULATION
REGARDING CHAIN OF
CUSTODY AND TOOLMARK
ANALYSIS

The United States of America, by and through Ethan R. Plaut, Assistant United States Attorney for the District of Montana, and Eric N. Peffley, Trial Attorney for the United States Department of Justice Civil Rights Division, and the defendant, through defense counsel, Colin M. Stephens and Nick K. Brooke, provide the following stipulations to the Court for purposes of trial in this matter.

Stipulation #1—Chain of Custody

The parties stipulate and agree that the following exhibits are admissible in this case without the need for any further evidence or testimony as to their foundation, chain of custody, or authenticity:

1. Government Exhibit 1 – Four (4) 7.62x39mm cartridge cases recovered on Basin Street near Basin Creek Pottery on March 22, 2020.
2. Government Exhibit 2 – Seven (7) 7.62x39mm cartridge cases recovered near the intersection of Basin Street and Silver Avenue on March 22, 2020.
3. Government Exhibit 3 – Two (2) rounds of 7.62x39mm ammunition recovered near the intersection of Basin Street and Silver Avenue on March 22, 2020.
4. Government Exhibit 4 – One (1) fired bullet recovered from the house of Individual 1 on March 22, 2020.

5. Government Exhibit 5 – AR style rifle recovered from a Ford Mustang on March 24, 2020.
6. Government Exhibit 6 – Two (2) rifle magazines recovered from a Ford Mustang on March 24, 2020.
7. Government Exhibit 7 – Forty-two (42) rounds of 5.56 caliber ammunition recovered from a Ford Mustang on March 24, 2020.
8. Government Exhibit 8 –Smith & Wesson Model 657, .41 Remington Magnum caliber revolver recovered from a Ford Mustang on March 24, 2020.
9. Government Exhibit 9 – Springfield Armory HS Produkt Model XD-S, .45 ACP caliber pistol recovered from the defendant on March 23, 2020.
10. Government Exhibit 10 –Fourteen (14) rounds of .45 caliber ammunition recovered from the defendant on March 23, 2020.
11. Government Exhibit 11 – AK style 7.62x39mm caliber rifle recovered at 1 Basin Creek Road on April 8, 2020.
12. Government Exhibit 12 – One (1) round of 7.62x39 mm ammunition recovered at 1 Basin Creek Road on April 8, 2020.
13. Government Exhibit 13—Two (2) rifle magazines recovered at 1 Basin Creek Road on April 8, 2020.
14. Government Exhibit 14 – Thirty (30) rounds of 7.62x39mm

ammunition recovered at 1 Basin Creek Road on April 8, 2020.

15. Government Exhibit 15 –Mossberg Model 100 ATR, 30-06 caliber rifle recovered at 1 Basin Creek Road on April 8, 2020.

16. Government Exhibit 16 – Four (4) rounds of 30-06 ammunition recovered at 1 Basin Creek Road on April 8, 2020.

17. Government Exhibit 17 –Assorted ammunition recovered at 1 Basin Creek Road on April 8, 2020.

18. Government Exhibit 18 – Two holsters and one magazine recovered from Ford Mustang and the defendant on March 23rd and 24th, 2020.

The parties agree that these exhibits were found at the above-described locations on the above-described dates and have remained in substantially the same condition throughout this case.

Stipulation #2— Toolmark Analysis

The parties stipulate and agree that the following facts are true and admissible:

1. The Bureau of Alcohol, Tobacco, Firearms, and Explosives submitted Exhibits 1, 2, 4, and 11 to the ATF's forensic science laboratory.

2. Howard Kong was a firearm and toolmark examiner with the ATF. He was qualified by training and experience to conduct forensic analysis of firearms,

cartridge cases fired in firearms, and bullets fired in firearms. He was qualified to determine whether a particular bullet was fired from a particular firearm and to determine whether a particular cartridge case was fired in a particular firearm.

3. Mr. Kong conducted testing and analysis of Exhibits 1, 2, 4, and 11 using reliable methods and tools. The results are as follows:

4. All four of the cartridge cases in Exhibit 1 were fired in the AK-style rifle (Exhibit 11).

5. Six of the seven Exhibit 2 cartridges were fired in the AK-style rifle (Exhibit 11). The seventh cartridge in Exhibit 2 could have been fired in Exhibit 11, but Mr. Kong could not definitively conclude that it was, or was not, fired in Exhibit 11.

6. Exhibit 4 was a bullet of a caliber that could have been fired from the AK-style rifle (Exhibit 11). However, Mr. Kong could not definitively conclude that it was, or was not, fired from Exhibit 11.

DATED this 26th day of January, 2023.

/s/ Ethan R. Plaut
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/s/ Colin M. Stephens
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Counsel for Mr. Howald

/s/ Eric N. Peffley
ERIC N. PEFFLEY
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/s/ Nick K. Brooke
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